

NETHERLANDS INDIA AND BURMA

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were such as to develop their worse rather than their better qualities. Our methods might have done very well for Europe; they may have been suitable in India, where the people are protected against economic forces by the ties of caste, but they did not suit the Burman. 'It was the best butter', said the Hatter; but it spoiled the watch.

Clerical Unrest. In Burma the turbulence prevalent among the monks is one of the more recent features of social disorder and unrest, but it is merely one aspect of the dissolution of society indicated by the growth of crime. In Java there is nothing of the kind. As already noticed, causes relating to religion are tried in special Moslem courts, instead of, as in Burma, coming before the ordinary lay court; and the law applied is Moslem ecclesiastical law as interpreted by native Moslem judges, whereas in Burma the rule of decision is looked for in the *dhenmathats* as interpreted on the principles of western law. The procedure in Java does not weaken but fosters corporate authority in the religious establishment. Moreover, the village clerics are appointed by or with the approval of the Regent, whereas in Burma the Government has held aloof from all concern with promoting the establishment, while actively breaking it down by the transfer of religious causes to the civil courts. The Dutch have with good reason tried to conciliate Moslem sentiment and, even if they have not been wholly successful, there is nothing in Java corresponding to the clerical unrest in Burma.¹

Corruption. We have had to notice the prevalence of corruption in Burma. By all accounts it is practically unknown in Java. The absence of judicial corruption can easily be understood. Petty cases are settled by arbitration either out of court, or before a bench of notables with a senior and well-paid official as chairman; or they go before a civil servant or judicial officer with long service and on high pay. Moreover, the penalties imposed are so trivial that it is cheaper to be punished than to bribe a policeman or magistrate to escape punishment. Serious matters go before a bench containing at least three high judicial officers as well as laymen of good standing. It would be difficult and dangerous to bribe the whole bench. In civil cases the decision purports to follow customary law, and the people can know whether it is right; the court must justify itself to popular opinion and not to higher judicial authority. In these circumstances there is little scope for bribery.

But that corruption should be unknown in general administration,

¹ Beusquet, pp. 51 ff.; *Vrij Nederland*, 27 Nov. 1943.

691 indicated, education tends to flood the land with lawyers, who foster litigation for their living. The growth of litigation in India has long been deplored. In Burma there was little litigation until rapid economic development began in 1870, and so late as 1886 it could still be said that Burmans were not litigious. That is no longer true. We find the same plague of lawyers in Indo-China and the Philippines, and in Africa litigation has been described as the curse of the country.

674 The law breeds litigation and this, married to poverty by agrarian distress, breeds crime. Here again Burma is exceptional, but it appears that of the four countries in the world with the highest proportionate jail population, three are British dependencies.¹ All this is nothing new. In Burma, as far back as 1883, dacoit bands flourished just outside the capital. So they did in Java in 1830, when the introduction of western law by Raffles created a 'proletariat who go about and steal'. Still earlier in Madras, on the introduction of the rule of law from Bengal at the end of the eighteenth century, 'the same results', says Munro, 'followed here which had occurred elsewhere; justice ceased in great measure to be administered and the increase of crime was appalling'.² These words might have been taken from any report on the administration of Burma from the eighties onwards.

696 Under native rule disputes are usually settled by arbitration. Under European rule it is at first only in cases with foreigners that natives come to court. Naturally Europeans best understand their own laws, and the middlemen and moneylenders learn it in the course of business, but the cultivator neither understands the law nor how it works and, as a rule, is least able to afford a skilful advocate. The decision usually goes in favour of the longer purse. Men who lose their case against a wealthier opponent and without understanding that a decision, apparently arbitrary and in their view unjust, may none the less be good law, naturally attribute the result to bribery, and this is the readiest excuse given by their advocate for his failure. Nothing is so favourable to judicial corruption as a belief that it is general. That is a principle which works in Africa as in Asia.³ It seems, indeed, to be generally true in tropical dependencies that western law encourages litigation, crime and corruption.

182 The substitution of the rule of law for the rule of custom naturally expedites the disintegration of the customary social structure. But it also reacts more directly on the social structure. The former native

¹ Barnes, L., *Skeleton of the Empire* (1937), p. 60.

² Gleig, pp. 221-2.

³ *Colonial Review*, 1944, June, p. 170.